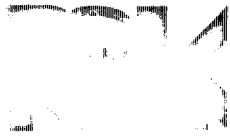


#169



August 1, 2000
9:00 a.m.

COMMISSIONERS COURT
of Polk County, Texas
County Courthouse, 3rd floor
Livingston, Texas

NOTICE is hereby given that a special meeting of the Polk County Commissioners Court will be held on the date stated above, at which time the following subjects will be discussed;

1. CONSIDER APPROVAL OF RESOLUTION AUTHORIZING SUBMISSION OF THE FY2001/2002 TEXAS COMMUNITY DEVELOPMENT PROGRAM APPLICATION FOR A WATER SYSTEM IMPROVEMENTS PROJECT IN THE BOLD SPRINGS AREA (TEMPE WATER SUPPLY CORPORATION)
2. CONSIDER APPROVAL OF AUTHORIZATION FOR COUNTY JUDGE TO SIGN ANY/ALL DOCUMENTS RELATING TO THE OF PURCHASE OF REAL ESTATE LOCATED AT 109 W. MILL ST. IN LIVINGSTON, TX., AS A PART OF THE COURTHOUSE FACILITY EXPANSION PROJECT.

Dated: July 28, 2000

Commissioners Court of Polk County, Texas
By: John P. Thompson, County Judge

I, the undersigned County Clerk, do hereby certify that the above Notice of Meeting of the Polk County Commissioners Court is a true and correct copy of said Notice and that I posted a true and correct copy of said Notice in the Polk County Courthouse at a place readily accessible to the general public at all times on Friday, July 28, 2000 and that said Notice remained so posted continuously for at least 72 hours preceding the scheduled time of said Meeting.

BARBARA MIDDLETON, COUNTY CLERK
BY Deputy

FILED AND RECORDED
OFFICIAL PUBLIC RECORDS
2000 JUL 28 PM 3:07

BARBARA MIDDLETON
COUNTY CLERK, POLK CO.

FILED AND RECORDED
OFFICIAL PUBLIC RECORDS
POLK COUNTY, TEXAS



2000 JUL 31 PM 5:02

Barbara Middleton

BARBARA MIDDLETON
COUNTY CLERK

**EMERGENCY ADDENDUM TO MEETING OF THE
COMMISSIONERS COURT OF POLK COUNTY, TEXAS**

69

Notice is hereby given that an Emergency Addendum is hereby added for the above named Commissioners' Court meeting to be held on Tuesday, August 1, 2000 at 9:00 a.m. in the County Courthouse, Livingston, Texas, to wit:

ADD:

**3. TAKE ANY/ALL NECESSARY ACTION PERTAINING TO
COUNTY-WIDE BURN BAN.**

Dated Monday, July 31, 2000.

Commissioners' Court of Polk County, Texas

By *John P. Thompson*

John P. Thompson, County Judge

I, the undersigned County Clerk, do hereby certify that the above Notice of Meeting of Polk County Commissioners Court, is a true and correct copy of said Notice, and that I posted a true and correct copy of said notice at the door of the County Courthouse of Polk County, Texas, at a place readily accessible to the general public on Monday, July 31, 2000, and said notice remained so posted continuously for at least 3 hours preceding the scheduled time of said meeting.

Barbara Middleton, County Clerk

By *Barbara Middleton*

STATE OF TEXAS)

COUNTY OF POLK)

VOL. 46 PAGE 953
DATE: AUGUST 1, 2000

"SPECIAL" CALLED MEETING
Commissioner Purvis-Absent
Barbara Middleton - Absent

**** CORRECTED ****
"COMMISSIONERS COURT"

BE IT REMEMBERED ON THIS THE 1st DAY OF AUGUST, 2000
THE HONORABLE COMMISSIONERS COURT MET IN "SPECIAL"
CALLED MEETING WITH THE FOLLOWING OFFICERS AND MEMBERS
PRESENT, TO WIT:


JUDGE JOHN P. THOMPSON, PRESIDING.

B.E. "Slim" SPEIGHTS-COUNTY COMMISSIONER PCT#1, BOBBY SMITH
COUNTY COMMISSIONER PCT #2, R.R. "Dick" HUBERT - COUNTY
COMMISSIONER PCT#4, SHARON JORDAN - CHIEF DEPUTY COUNTY CLERK,
& BILL LAW - COUNTY AUDITOR, THE FOLLOWING AGENDA ITEMS, ORDERS,
AND DECREES WERE DULY HAD, CONSIDERED & PASSED.

1. JUDGE JOHN THOMPSON CALLED THE MEETING TO ORDER & WELCOMED
THE GUEST AT 9:00 A.M.
2. MOTIONED BY BOBBY SMITH, SECONDED BY B.E. "Slim" SPEIGHTS,
TO APPROVE "RESOLUTION" AUTHORIZING SUBMISSION OF THE
FY2001/2002 TEXAS COMMUNITY DEVELOPMENT PROGRAM (TCDP)
APPLICATION FOR A WATER SYSTEM IMPROVEMENTS PROJECT IN
THE BOLD SPRINGS AREA (TEMPE WATER SUPPLY CORP.)
ALL VOTING YES.
3. MOTIONED BY R.R. "Dick" HUBERT, SECONDED BY B.E. "Slim" SPEIGHTS,
APPROVAL TO AUTHORIZE JUDGE JOHN P. THOMPSON, COUNTY
JUDGE TO SIGN ANY/ALL DOCUMENTS RELATING TO THE PURCHASE OF
REAL PROPERTY LOCATED AT 109 W. MILL STREET IN LIVINGSTON
TEXAS, AS PART OF THE COURTHOUSE FACILITY EXPANSION PROJECT.
ALL VOTING YES.
4. MOTIONED BY B.E. "Slim" SPEIGHTS, SECONDED BY R.R. "Dick" HUBERT,
APPROVAL TO EXTEND THE COUNTY WIDE "BURN BAN" FOR AN
INDEFINITE PERIOD OF TIME.
ALL VOTING YES.
5. MOTIONED BY R.R. "Dick" HUBERT, SECONDED BY B.E. "Slim" SPEIGHTS,
TO ADJOURN COURT THIS 1ST DAY OF AUGUST 2000 @ 9:12 A.M.
ALL VOTING YES.


JOHN P. THOMPSON, COUNTY JUDGE

ATTEST:


SHARON JORDAN, CHIEF DEPUTY COUNTY CLERK

C:\WP51\COMMCRT.2000\AUG01.WPD

#2

COPY

A RESOLUTION OF THE COUNTY COMMISSIONERS' COURT OF THE COUNTY OF POLK, TEXAS, AUTHORIZING THE SUBMISSION OF A TEXAS COMMUNITY DEVELOPMENT PROGRAM APPLICATION TO THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS FOR THE COMMUNITY DEVELOPMENT PROJECT FUND; AND AUTHORIZING THE COUNTY JUDGE TO ACT AS THE COUNTY'S CHIEF EXECUTIVE OFFICER AND AUTHORIZED REPRESENTATIVE IN ALL MATTERS PERTAINING TO THE COUNTY'S PARTICIPATION IN THE COMMUNITY DEVELOPMENT PROGRAM.

WHEREAS, the County Commissioners' Court of the County of Polk desires to develop a viable urban community, including decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low/moderate income; and

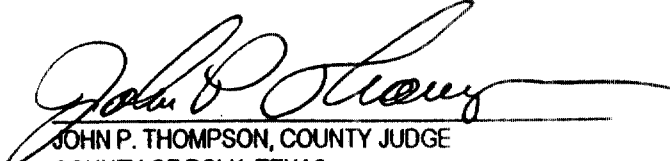
WHEREAS, certain conditions exist, which represent a threat to the public health and safety; and

WHEREAS, it is necessary and in the best interest of the County of Polk to apply for funding under the 2001/2002 Texas Community Development Program;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNTY COMMISSIONERS' COURT OF POLK COUNTY, TEXAS:

1. That a Texas Community Development application for the Community Development Fund is hereby authorized to be filed on behalf of the County with the Texas Department of Housing and Community Affairs;
2. That the County's application be placed in competition for funding under the Community Development Fund;
3. That the application be for \$250,000.00 of grant funds to carry out Water System Improvements in the Bold Springs Area
4. That the County Commissioners' Court directs and designates the County Judge as the County's Chief Executive Officer and authorized representative to act in all matters in connection with the application and the County's participation in the Texas Community Development Program;
5. That it further be stated that the County of Polk is committing \$0.00 from its local fund as a cash contribution toward the project activities of this Water System Improvements Project and \$0.00 in-kind service.
6. That the Court following approved procurement procedures awarded Professional Engineering Services Contract to Goodwin-Lasiter, Inc. and Administrative Services Contract to David J. Waxman, Inc.

PASSED AND APPROVED THIS 1st DAY OF AUGUST, 2000.


 JOHN P. THOMPSON, COUNTY JUDGE
 COUNTY OF POLK, TEXAS

ATTEST

Marcia Cook

ERNEST HARLAN COCHRAN TRUST "A"

By Judy Paulette Boatman Cochran
Judy Paulette Boatman Cochran, Co-Trustee

By R. Malcolm Jones
R. Malcolm Jones, Co-Trustee

Said Trust being the Managing Partner of JAR Partnership.

By Cherie Wheeland
Cherie Wheeland, Trustee



TEXAS ASSOCIATION OF REALTORS
COMMERCIAL IMPROVED PROPERTY EARNEST MONEY CONTRACT

THIS FORM IS FURNISHED BY THE TEXAS ASSOCIATION OF REALTORS
FOR USE BY ITS MEMBERS. USE OF THIS FORM BY PERSONS WHO ARE NOT MEMBERS
OF THE TEXAS ASSOCIATION OF REALTORS IS NOT AUTHORIZED.
Texas Association of REALTORS, Inc., 1995

1. PARTIES: PEDIGO FAMILY LIVING TRUST, E. J. PEDIGO, TRUSTEE, CHERIE WITBEKAMP,
TRUSTEE and JAR PARTNERSHIP (Seller) agrees to sell and
convey to COUNTY OF POLK, STATE OF TEXAS,
(Buyer) and Buyer agrees to buy from Seller the Property described below.

2. PROPERTY: The real property situated in Polk County, Texas,
described as follows or as described on attached exhibit:

Block 17 of the Town of Livingston, Polk County, Texas, as shown by the Plat
of said Town, as the same is of record in the Plat Records of Polk County,
Texas;

together with: (a) all buildings, improvements, fixtures, and all property of every kind and character and
description (personal or real) owned by Seller located on, attached to, or used in connection with the
Property; (b) all rights, privileges and appurtenances pertaining thereto, including any right, title, and interest
of Seller in and to adjacent streets, alleys, and rights-of-way; (c) Seller's interest in and to all leases or rents
and security deposits; (d) Seller's interest in and to all licenses and permits with respect to the Property; (e)
Seller's interest in all third party warranties or guaranties, if transferable, relating to the Property or to any
tangible personal property and fixtures located on, attached to, or used in connection with the Property; and
(f) Seller's interest in any trade names, if transferable, used in connection with the Property. The property
sold by this contract is called the "Property". The metes and bounds description determined by the survey
of the Property under paragraph 6(b) shall replace any exhibit describing the perimeter boundaries of the
Property if it differs from the exhibit. NOTICE: Any property to be excluded from the sale should be
described in paragraph 11.

3. SALES PRICE:

(a) Cash portion of Sales Price payable by Buyer	\$ 500,000.00
(b) Sum of all financing described in paragraph 4	\$.00
(c) Sales Price [sum of (a) and (b)]	\$ 500,000.00

FINANCING: The portion of the Sales Price not payable in cash shall be paid as follows:

(a) ASSUMPTION: Buyer shall assume the unpaid principal balance of a first lien promissory note payable
to _____, dated _____, which balance at closing will be \$ _____.
Buyer's initial payment shall be the first payment due after closing. Buyer's assumption of the existing
note includes all obligations imposed by the deed of trust securing the note, recorded in Vol. _____,
Page _____ in the real property records of the county where the Property is located. If the unpaid
principle balance of the assumed loan as of the Closing Date varies from the loan balance stated above,
the cash payable at closing shall be adjusted by the net amount of any variance; provided, if the total
principal balance of all assumed loans varies in amount greater than \$ _____ at
closing, either party may terminate this contract and the Earnest Money shall be refunded to Buyer
unless either party elects to eliminate the excess in the variance by an appropriate adjustment at
closing. Buyer may terminate this contract and the Earnest Money shall be refunded to Buyer if the note
holder on assumption requires: (i) Buyer to pay an assumption fee in excess of \$ _____, and
Seller declines to pay such excess; (ii) an increase in the interest rate to more than _____ %; or (iii)
any other modification of the loan documents. A vendor's lien and deed of trust to secure assumption
shall be required, which shall automatically be released on execution and delivery of a release by the
note holder. If Seller is released of liability on any assumed note, the vendor's lien and deed of trust to

Commercial Improved Earnest Money Contract concerning Block 17 of the Town of Livingston

secure assumption shall not be required. If assumption approval is required by the note holder, Buyer shall apply for assumption approval within _____ days after the Effective Date of this contract and shall make every reasonable effort to obtain assumption approval. Assumption approval shall be deemed to have been obtained when the lender has determined that Buyer has satisfied all of lender's financial conditions (those items relating to Buyer's ability to qualify for assumption). If assumption approval is not obtained within _____ days after the Effective Date, this contract shall terminate and the Earnest Money shall be refunded to Buyer.

(b) THIRD PARTY FINANCING: Buyer shall apply for a third party first lien note of \$ _____ payable at monthly quarterly _____ intervals for not less than _____ years with the initial interest rate not to exceed _____ % per annum. Within _____ days after the Effective Date of this contract Buyer shall apply for all third party financing and shall make every reasonable effort to obtain financing approval. Financing approval shall be deemed to have been obtained when the lender has determined that Buyer has satisfied all of lender's financial conditions (those items relating to Buyer's ability to qualify for approval of a loan). If financing approval is not obtained within _____ days after the Effective Date, this contract shall terminate and the Earnest Money shall be refunded to Buyer. Each note to be executed hereunder shall be secured by vendor's and deed of trust liens.

(c) SELLER FINANCING: At closing, Buyer shall execute and deliver a promissory note (the Note) from Buyer to Seller of \$ _____, bearing _____ % interest per annum, and interest at the maximum rate of interest, but not to exceed the maximum rate of interest, per annum allowed by law on matured, unpaid amounts. The Note shall be secured by vendor's and deed of trust liens and an assignment of leases payable at the place designated by Seller. The Note shall shall not provide for liability (personal or corporate) against the maker in the event of default. The Note shall be payable as follows:

- (1) In one payment due _____ after the date of the Note with interest payable monthly quarterly annually _____.
- (2) In monthly quarterly annual _____ installments of \$ _____ including interest plus interest beginning _____ after the date of the Note and continuing at monthly quarterly annual _____ intervals thereafter for _____ when the entire balance of the Note shall be due and payable.
- (3) Interest only in monthly quarterly annual _____ installments for the first _____ year(s) and thereafter in installments of \$ _____ including interest plus interest beginning _____ after the date of the Note and continuing at monthly quarterly annual _____ intervals thereafter for _____ when the entire balance of the Note shall be due and payable.

Unless the parties agree otherwise, the most recent forms prepared by the State Bar of Texas shall be used for the Note and deed of trust required by this paragraph 4(c). The Note may be prepaid in whole or in part at any time without penalty. Any prepayments are to be applied to the payment of the installments of principal last maturing and interest shall be immediately cease on the prepaid principal. The lien securing payment of the Note will be inferior to any lien securing any superior note described in this contract. If an Owner Policy of Title Insurance is furnished, Buyer, at Buyer's expense, shall furnish Seller with a Mortgagee Title Policy in the amount of the Note at closing. If all or any part of the Property is sold or conveyed without prior written consent of the Seller, then the Seller at Seller's option may declare the outstanding principal balance of the Note, plus accrued interest, to be immediately due and payable. The creation of a subordinate lien, any sale thereunder, any deed under threat or order of condemnation, any conveyance solely between the parties, the passage of title by reason of death of a maker or by operation of law shall not be construed as a sale or conveyance of the Property. In addition to the principal and interest installments, Buyer shall shall not deposit with Seller a pro rata part of the estimated annual ad valorem taxes on the Property and a pro rata part of the estimated annual insurance premiums for the improvements on the Property. If Buyer deposits taxes and insurance deposits with Seller, Buyer agrees that the taxes and insurance deposits are only estimates and may be insufficient to pay total taxes and insurance premiums, and Buyer agrees to pay any deficiency within 30 days after notice from Seller. If Buyer deposits taxes and insurance deposits with Seller, Buyer's failure to pay the deficiency shall constitute a default under the deed of trust. If any superior lien holder on the Property is collecting escrow payments for taxes and insurance, any

Commercial Improved Earnest Money Contract concerning Block 17 of the Town of Livingston

requirement to deposit taxes and insurance deposits with Seller shall be inoperative so long as payments are being made to the superior lien holder. Any act or occurrence which would constitute default under the terms of any lien superior to the lien securing the Note shall constitute a default under the deed of trust securing the Note. The Note shall include a provision for reasonable attorney's fees if the Note is placed in the hands of an attorney for collection.

- (d) CREDIT APPROVAL ON ASSUMPTION OR SELLER FINANCING: Within _____ days after the Effective Date of this contract, Buyer shall deliver to Seller: credit report; verification of employment, including salary; verification of funds on deposit in financial institutions; current financial statement; and _____; to establish Buyer's creditworthiness for assumption approval or seller financing. If Buyer's documentation is not delivered within the specified time, this contract shall terminate and the Earnest Money shall be refunded to Buyer. If Buyer's documentation is timely delivered, and Seller determines in Seller's sole discretion that Buyer's credit is unacceptable, Seller may terminate this contract by written notice to Buyer within _____ days after expiration of the time for delivery and the Earnest Money shall be refunded to Buyer. If Seller does not so terminate this contract within the time specified, Seller shall be deemed to have accepted Buyer's credit.

5. EARNEST MONEY: Buyer shall deposit \$ 1,000.00 as Earnest Money with Polk County Title, Inc., (Escrow Agent) at 501 North Washington Street, Livingston, Texas 77351, (Address) on the Effective Date of this contract. The Earnest Money shall be deposited in an interest non-interest bearing account in a federally insured financial institution chosen by Escrow Agent and any interest shall be credited to Buyer. If Buyer fails to deposit the Earnest Money as required by this contract, Buyer shall be in default.

6. TITLE POLICY AND SURVEY:

- (a) TITLE POLICY: Seller shall furnish to Buyer at Buyer's ~~Seller's~~ expense an Owner Policy of Title Insurance (the Title Policy) issued by Polk County Title, Inc. (the Title Company) in the amount of the Sales Price, dated at or after closing, insuring Buyer against loss under the provisions of the Title Policy, subject only to those title exceptions permitted by this contract, or as may be approved by Buyer in writing, and the standard printed exceptions contained in the promulgated form of Title Policy; provided however that: (1) the exception as to area and boundaries shall shall not be deleted except for any shortages in area at the expense of Buyer Seller; and (2) the exception as to restrictive covenants shall be endorsed "None of Record", unless restrictions are approved by Buyer. Within 45 days after the Title Company receives a copy of this contract Seller shall furnish Buyer a commitment for Title Insurance (the Commitment) including copies of recorded documents evidencing title exceptions. Seller authorizes the Title Company to deliver the Commitment and related documents to Buyer at Buyer's address. Buyer shall have 45 days after receipt of the Commitment and legible copies of documents evidencing title exceptions required by this contract to object in writing to matters disclosed in the Commitment other than the standard printed exceptions as described or limited in this paragraph.

- (b) SURVEY REQUIRED: (Check (1) or (2) only)

- (1) Within _____ days after: the Effective Date of this contract; the date by which Buyer is required to complete inspections, studies or assessments in paragraph 7(b); (check (i) or (ii) only):

- (i) Buyer may obtain a survey of the Property at Buyer's expense.
 (ii) Seller, at Seller's expense, shall furnish to Buyer a survey of the Property dated after the Effective Date of this contract.

Buyer may, within _____ days after Buyer's receipt of the survey object in writing to any matter which constitutes a defect or encumbrance to title on the survey or if the survey shows any part of the Property to lie in a 100-year floodplain area.

Commercial Improved Earnest Money Contract concerning Block 17 of the Town of Livingston

(2) Within _____ days after the Effective Date of this contract, Seller shall furnish Buyer a true and correct copy of Seller's existing survey of the Property dated _____. The survey [check (i) or (ii)]: (i) shall be recertified no earlier than _____ at the expense of Buyer Seller; (ii) shall not be recertified. Within _____ days after Buyer receives a copy of the survey or after Buyer receives a copy of the recertified survey, whichever is later, Buyer may object in writing to any matter shown on the survey which constitutes a defect or encumbrance to title or if the survey shows any part of the Property to lie in a 100-year floodplain area.

The survey required by this paragraph (b) shall be made by a Registered Professional Land Surveyor acceptable to the title company and any lender. The survey shall: (i) identify the Property by metes and bounds or platted lot description; (ii) show that the survey was made and staked on the ground with corners permanently marked; (iii) set forth the dimensions and total area of the property; (iv) show the location of all improvements, highways, streets, roads, railroads, rivers, creeks, or other waterways, fences, easements, and rights of way on the Property with all easements and rights of way referenced to their recording information; (v) show any discrepancies or conflicts in boundaries, any visible encroachments, and any portion of the Property lying within the 100 year floodplain as shown on the current Federal Emergency Management Agency map; and (vi) contain the surveyor's certificate that the survey is true and correct.

Buyer's failure to object under paragraph 6(a) or 6(b) within the time allowed shall constitute a waiver of Buyer's right to object except that the requirements in Schedule C of the Commitment shall not be deemed to have been waived. If objections are made by Buyer, or any third party lender, Seller shall cure the objections within 20 days after the date Seller receives them. The Closing Date shall be extended as necessary to cure objections. If objections are not cured by the extended Closing Date, this contract shall terminate and the Earnest Money shall be refunded to Buyer unless Buyer elects to waive the objections.

7. PROPERTY CONDITION / FEASIBILITY STUDIES: (Check (a) or (b) only)

(a) PRESENT CONDITION:

(1) Buyer accepts the Property in its present "as-is" condition. ~~Buyer shall pay for any repairs required by a lender.~~

(2) Buyer accepts the Property in its present condition provided that Seller, at Seller's expense, shall complete the following repairs prior to closing: _____

_____. Buyer shall pay for any other repairs required by a lender.

(b) INSPECTIONS AND FEASIBILITY STUDIES: Within 100 days after the Effective Date of this contract Buyer, at Buyer's expense, may complete or cause to be completed inspections of the Property (including all improvements and fixtures) by inspectors of Buyer's choice. Inspections may include but are not limited to: (i) physical property inspections including, but not limited to, structural pest control, mechanical, structural, electrical, or plumbing inspections; (ii) economic feasibility studies; (iii) any type of environmental assessment or engineering study including the performance of tests such as soils tests, air sampling, or paint sampling; and (iv) compliance inspections to determine compliance with zoning ordinances, restrictions, building codes, and statutes (e.g., ADA, OSHA, and others). Seller shall permit Buyer and Buyer's inspectors access to the Property at reasonable times. Seller shall pay for turning utilities on for inspections. If Buyer determines, in Buyer's sole judgment, that the Property is not suitable for any reason for Buyer's intended use or is not in satisfactory condition, then Buyer may terminate this contract by providing written notice of termination and copies of all reports of inspections, studies, or assessments completed or caused to be completed by Buyer under this paragraph to Seller within the time required to complete the inspections, studies, or assessments under this paragraph, and the Earnest Money shall be refunded to Buyer less the sum of \$.00 to be retained by Seller as independent consideration for Buyer's right to terminate under this paragraph. If Buyer does not terminate this contract within the time required any objections with respect to the inspections, studies and assessments under this paragraph shall be deemed waived by Buyer. If this contract does not close through no fault of Seller, Buyer shall restore the Property to its original condition if altered due to inspections, studies, or assessments completed by Buyer or Buyer's inspectors. Within 10 days after the Effective Date of this contract Seller shall deliver to Buyer (~~strike any not to be delivered~~):

~~(1) a current rent roll of all leases affecting the Property certified by Seller to be true and correct;~~

Commercial Improved Earnest Money Contract concerning Block 17 of the Town of Livingston

- ~~(2) copies of all leases pertaining to the Property, including any modifications, supplements, or amendments to the leases;~~
- ~~(3) a current inventory of all tangible personal property and fixtures owned by Seller and located on, attached to, or used in connection with the Property;~~
- ~~(4) copies of all notes and deeds of trust assumed or taken subject to by Buyer;~~
- ~~(5) copies of all service, maintenance and management agreements relating to the ownership and operation of the Property;~~
- ~~(6) copies of all warranties and guarantees relating to the Property, or any part thereof, or to the tangible personal property and fixtures owned by Seller and located on, attached to, or used in connection with the Property;~~
- ~~(7) copies of all fire, hazard, liability, and other insurance policies held by Seller on or affecting the Property;~~
- ~~(8) copies of all leasing or other commission agreements with respect to the Property that are being assumed by Buyer;~~
- ~~(9) a copy of the as-built plans and specifications of the Property;~~
- ~~(10) copies of all invoices for utilities and repair expenses incurred by Seller for operation of the Property for each month for the preceding two (2) years prior to the Effective Date of this contract;~~
- ~~(11) a copy of Seller's income and expense statement for the Property from _____ to _____; and~~
- ~~(12) copies of all previous environmental assessments, studies, or analyses affecting the Property in Seller's possession.~~

8. BROKER'S REPRESENTATION AND FEES:

(Listing Broker): represents Seller only; acts as an intermediary between Seller and Buyer. Any other broker represents: Seller as Listing Broker's Subagent; Buyer only. Seller shall pay Listing Broker (choose only one):

- (a) the fee specified by separate agreement between Listing Broker and Seller.
- (b) a total cash fee of either \$ _____ or _____ % of the total Sales Price in _____ County, Texas, on closing of this sale, which Escrow Agent shall pay from Seller's proceeds of the sale. If Seller defaults, the cash fee shall be due and payable in full. If Buyer defaults, Escrow Agent is authorized to pay Listing Broker one-half of any Earnest Money Seller receives under this contract not to exceed the amount of the cash fee.

9. CLOSING:

- (a) The closing of the sale shall be on or before December 31, 2000, or within 7 days after objections to title or the survey have been cured, whichever date is later (the Closing Date); however, if financing or assumption approval has been obtained pursuant to paragraph 4, the Closing Date shall be extended up to 15 days only if necessary to comply with lender's closing instructions (for example, survey, insurance policy, property repairs, closing documents). If either party fails to close this sale by the Closing Date, the non-defaulting party shall be entitled to exercise the remedies contained in paragraph 15.
- (b) At closing Seller shall furnish, at Seller's expense (*strike any not to be furnished*):
- (1) tax statements showing no delinquent taxes on the Property;
- (2) a General Special Warranty Deed conveying good and indefeasible title to the Property showing no additional exceptions to those permitted in paragraph 6;
- (3) a Bill of Sale with warranties to title conveying title, free and clear of all liens, to any personal property defined as part of the Property in paragraph 2 and conveyed by this contract;

Commercial Improved Earnest Money Contract concerning Block 17 of the Town of Livingston

- (4) an assignment of all leases to or on the Property duly executed by Seller;
- (5) to the extent assignable, an assignment duly executed by Seller of any licenses and permits, maintenance, management or other contracts, and any warranties or guaranties defined as part of the Property in paragraph 2 or conveyed by this contract;
- (6) a current rent roll of the Property certified by Seller;
- (7) to the extent assignable, an assignment duly executed by Seller of any one or more of the insurance policies held by Seller pertaining to the Property; and
- (8) evidence that the person executing this contract is legally capable and authorized to bind Seller.
10. POSSESSION: Seller shall deliver possession of the Property to Buyer on or before eighteen [18] months from date of closing, in its present or required repaired condition, ordinary wear and tear excepted. Any possession by Buyer prior to closing or Seller after closing that is not authorized by a separate written lease agreement, shall establish a landlord-tenant at sufferance relationship between the parties.
11. SPECIAL PROVISIONS:
Sellers shall have the right to continue use of the property for eighteen [18] months from date of closing, at the monthly rental rate of \$4,100.00. When Sellers vacate the property, they will have the right to remove all property from the premises, and shall leave the property in the same condition as of time of closing.
12. SALES EXPENSES: To be paid in cash at or prior to closing:
- (a) Seller's Expenses: Releases of existing liens, including prepayment penalties and recording fees; release of Seller's loan liability; tax statements or certificates; preparation of deed; one-half of escrow fee; and other expenses stipulated to be paid by Seller under other provisions of this contract.
- (b) Buyer's Expenses: All loan fees or expenses (e.g., fees for application, origination, discount, appraisal, assumption, recording, tax service, mortgagee title policies, credit reports, document preparation and the like); preparation and recording of deed of trust to secure assumption; required premiums for flood and hazard insurance; interest on all periodic installment payment notes from date of disbursements to one payment period prior to dates of first monthly payments; one-half of escrow fee; fees for copies and delivery of title commitment and related documents; and other expenses stipulated to be paid by Buyer under other provisions of this contract.
- (c) If any sales expense exceeds the amount stated in this contract to be paid by either party, either party may terminate this contract unless either party agrees to pay such excess.
13. PRORATIONS AND ESTOPPEL CERTIFICATES:
- (a) PRORATIONS: Insurance (at Buyer's option) if a transfer is permitted by the insurance carrier, interest on any assumed loan, current taxes, and any rents shall be prorated through the Closing Date. If the amount of the ad valorem taxes for the year in which the sale is closed is not available on the Closing Date, proration of taxes shall be made on the basis of taxes assessed in the previous year, with a subsequent cash adjustment of such proration to be made between Seller and Buyer, if necessary, when actual tax figures are available. If Buyer is assuming payment of or taking subject to any existing loan on the Property, all reserve deposits for the payment of taxes, insurance premiums, and other charges, shall be transferred to Buyer by Seller and Buyer shall pay to Seller the amount of such reserved deposits at closing.
- ~~(b) ESTOPPEL CERTIFICATES: Within _____ days after the Effective Date of this Contract, Seller shall deliver to Buyer estoppel certificates signed not earlier than _____ by each tenant leasing space in the Property stating that, as of the date signed: no default exists under the terms of the lease agreement by either lessor or lessee; the amount of any rental payments made in advance, if any; the amount of any security deposits made, if any; the amount of any offsets against rent, if any; and that the tenant has no defenses against the payment of rent accruing under the terms of the lease agreement. If Seller is unable to deliver the estoppel certificates in accordance with the terms of this paragraph without fault by the specified time, Buyer may: (i) terminate this contract and the Earnest Money shall be refunded to Buyer; (ii) extend the time for performance up to 15 days and the Closing Date shall be extended as necessary; or (iii) waive Seller's requirement to deliver the estoppel certificates.~~

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Commercial Improved Earnest Money Contract concerning Block 17 of the Town of Livingston~~(c) Seller shall, at closing, tender to Buyer any security deposits, prepaid expenses, and advanced rental payments paid by any and all tenants.~~**14. CASUALTY LOSS AND CONDEMNATION:**

(a) If any part of the Property is damaged or destroyed by fire or other casualty loss, Seller shall restore the Property to its previous condition as soon as reasonably possible, but in any event by the Closing Date. If Seller is unable to do so without fault, Buyer may: (i) terminate this contract and the Earnest Money shall be refunded to Buyer; (ii) extend the time for performance up to 15 days and the Closing Date shall be extended as necessary; or (iii) accept the Property in its damaged condition and accept an assignment of insurance proceeds. Provisions of the Texas Property Code to the contrary shall not apply.

~~(b) If prior to closing condemnation proceedings are commenced against any portion of the Property, Buyer may: (i) terminate this contract by written notice to Seller within _____ days after Buyer is advised of the condemnation proceeding and the Earnest Money shall be refunded to Buyer; or (ii) appear and defend in the condemnation proceeding and any award in condemnation shall, at Buyer's election, become the property of Seller and the sales price shall be reduced by the same amount or any award shall become the property of Buyer and the sales price shall not be reduced.~~

15. DEFAULT: If Buyer fails to comply with this contract, Buyer shall be in default. Seller may either: enforce specific performance, seek other relief as may be provided by law, or both; or terminate this contract and receive the Earnest Money as liquidated damages, thereby releasing the parties from this contract. If Seller is unable without fault to make any noncasualty repairs, deliver the estoppel certificates, or deliver the Commitment within the time allowed, Buyer may either terminate this contract and receive the Earnest Money as the sole remedy or extend the time for performance up to 15 days and the Closing Date shall be extended as necessary. If Seller fails to comply with this contract for any other reason, Seller shall be in default and Buyer may either enforce specific performance, seek such other relief as may be provided by law, or both; or terminate this contract and receive the Earnest Money, thereby releasing the parties from this contract.

16. ATTORNEY FEES: If, Buyer, Seller, Listing Broker, Other Broker, or Escrow Agent is a prevailing party in any legal proceeding brought under or with relation to this contract or this transaction, such party shall be entitled to recover from the non-prevailing parties all costs of such proceeding and reasonable attorney fees. The provisions of this paragraph shall survive closing.

17. ESCROW: If either party makes demand for the payment of the Earnest Money, Escrow Agent has the right to require from all parties and brokers a written release of liability of Escrow Agent for disbursement of the Earnest Money. Any refund or disbursement of Earnest Money under this contract shall be reduced by the amount of unpaid expenses incurred on behalf of the party receiving the Earnest Money, and Escrow agent shall pay the same to the creditors entitled thereto. At closing, the Earnest Money shall be applied first to any cash down payment, then to Buyer's closing costs and any excess refunded to Buyer. Demands and notices required by this paragraph shall be in writing and delivered by hand delivery or by certified mail, return receipt requested.

18. MATERIAL FACTS:

(a) Seller shall convey the Property on closing: (i) with no liens, assessments, Uniform Commercial Code or other security interests against the Property which will not be satisfied out of the Sales Price unless securing payment of any loans assumed by Buyer; (ii) without any assumed loans in default; and (iii) with no parties in possession of any portion of the Property as lessees, tenants at sufferance, or trespassers except tenants under the written leases delivered to Buyer pursuant to this contract.

(b) To the best of Seller's knowledge and belief (choose (1) or (2) only):

(1) Seller is not aware of any material defects to the Property except as stated in the attached Property Condition Statement.

(2) Seller is not aware of:

(i) any material defects to the Property except: roof leaks

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(ii) any environmental hazards or conditions affecting the Property which would violate any federal, state or local statutes, regulations, ordinances or other requirements and more specifically, but without limitation, whether: (1) the Property is or has ever been used for the storage or disposal of hazardous substances or materials or toxic waste, a dump site or landfill, or the housing of any underground tanks or drums; (2) radon, asbestos insulation or fireproofing, ureaformaldehyde foam insulation, lead-based paint or other pollutants or contaminants of any nature now exist or have ever existed on the Property; (3) wetlands, as defined by federal or state law or regulation are on the Property; and (4) threatened or endangered species or their habitat, as defined by the Texas Parks and Wildlife Department or the U.S. Fish and Wildlife Service, are on the property; except as follows:

(c) Each written lease to be furnished to Buyer under this contract (the leases) shall be in full force and effect according to its terms without amendment or modification that is not disclosed to Buyer in writing. All the leases shall contain the entire written or oral agreements of any kind for the leasing, rental, or occupancy of any portion of the Property. Seller shall disclose in writing to Buyer: (i) any lease modifications, amendments, or defaults made subsequent to the date the leases are furnished to Buyer but prior to closing; (ii) any failure by Seller to comply with all of Seller's obligations under the leases; (iii) any facts or circumstances that would constitute a default by Seller under any lease or entitle any tenant to offsets or damages; (iv) any lease in which tenant does not actually occupy the premises leased; (v) if any rent under any lease has been collected in advance of the current month; (vi) if any concessions, bonuses, free rents, rebates, or other matters affect the rental for any tenant; (vii) if any of the leases or rentals or other sums payable under the leases have been assigned or otherwise encumbered, except as security for loan(s) assumed or taken subject to as provided in this contract; and (viii) if any tenant under any lease is in default.

19. **NOTICES:** All notices shall be in writing and effective when hand-delivered, mailed by certified mail return receipt requested, or sent by facsimile transmission to:

Buyer at c/o John Thompson, County Judge
Polk County Courthouse
Livingston, Texas 77351
 Phone: 936/327-6813
 Fax: 936/327-6891

Seller at c/o E. J. Pedigo
1208 West Calhoun
Livingston, Texas 77351
 Phone: 936/327-4442
 Fax: 936/327-7722

20. **FEDERAL TAX REQUIREMENT:** If Seller is a "foreign person", as defined by applicable law, or if Seller fails to deliver an affidavit that Seller is not a "foreign person", then Buyer shall withhold from the sales proceeds at closing an amount sufficient to comply with applicable tax law and deliver the same to the Internal Revenue Service, together with appropriate tax forms. Internal Revenue Service regulations require filing written reports if cash in excess of specified amounts is received in the transaction.
21. **DISPUTE RESOLUTION:** The parties agree to negotiate in good faith in an effort to resolve any dispute related to this contract that may arise. If the dispute cannot be resolved by negotiation, the dispute shall be submitted to mediation before the parties resort to arbitration or litigation and a mutually acceptable mediator shall be chosen by the parties to the dispute who shall share the cost of mediation services equally.
22. **AGREEMENT OF THE PARTIES:** This contract shall be binding on the parties, their heirs, executors, representatives, successors, and assigns. This contract shall be construed under and in accordance with laws of the State of Texas. This contract contains the entire agreement of the parties and cannot be changed except by written agreement. If this contract is executed in a number of identical counterparts, each counterpart is deemed an original and all counterparts shall, collectively, constitute one agreement. Buyer may may not assign this contract. If Buyer assigns this contract Buyer shall be relieved of any future liability under this contract only if the assignee assumes in writing all obligations and liability of Buyer under this contract. Addenda which are part of this contract are: none
23. **TIME:** Time is of the essence in this contract. Strict compliance with the times for performance stated in this contract is required.
24. **EFFECTIVE DATE:** The Effective Date of this contract for the purpose of performance of all obligations shall be the date this contract is received by the Escrow Agent after all parties have executed this contract.

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25. MISCELLANEOUS:


- (a) Buyer should have an Abstract covering the Property examined by an attorney of Buyer's selection, or Buyer should be furnished with or obtain a Title Policy.
- (b) If the Property is situated in utility or other statutorily created district providing water, sewer, drainage, or flood control facilities and services, Chapter 50 of the Texas Water Code requires Seller to deliver and the Buyer to sign the statutory notice relating to the tax rate, bonded indebtedness, or standby fee of the district prior to final execution of this contract.
- (c) If the Property adjoins or shares a common boundary with the tidally influenced submerged lands of the state, Section 33.135 of the Texas Natural Resources Code, requires a notice regarding coastal area property to be included in the contract.
- (d) Buyer should not rely upon any oral representations about the Property from any source. Seller and any broker have no knowledge of any defects in the Property other than what has been disclosed in this contract or other writing.
- (e) Brokers are not qualified to render property inspections, surveys, engineering studies, environmental assessments, or inspections to determine compliance with zoning, governmental regulations, or laws. Buyer should seek experts to render such services. Selection of inspectors and repairmen is the responsibility of the Buyer and not the Broker.

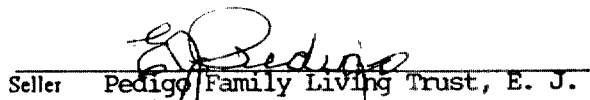
26. CONTRACT AS OFFER: The execution of this contract by the first party constitutes an offer to buy or sell the Property. Unless accepted by the other party by 5:00 p.m. (in the time zone in which the Property is located) on August 10, 2000, the offer shall lapse and be null and void.

This is intended to be a legally binding contract. READ IT CAREFULLY. NO REPRESENTATION OR RECOMMENDATION IS MADE BY BROKER OR ITS AGENTS OR EMPLOYEES AS TO THE LEGAL SUFFICIENCY, LEGAL EFFECT, OR TAX CONSEQUENCES OF THIS DOCUMENT OR TRANSACTION. CONSULT YOUR ATTORNEY BEFORE SIGNING.

Buyer's Attorney Bill R. Jones

Seller's Attorney R. Malcolm Jones


Buyer County of Polk, State of Texas
By: John P. Thompson, County Judge


Seller Pedigo Family Living Trust, E. J. Pedigo, Trustee

Buyer

Seller

AGREEMENT BETWEEN BROKERS

Listing Broker agrees to pay _____, Other Broker, a fee of \$ _____ or _____ % of the Sales Price when the Listing Broker's fee is received. Escrow Agent is authorized and directed to pay Other Broker from Listing Broker's fee at closing. This Agreement Between Brokers supersedes any prior offers and agreements for compensation between Brokers.

Other Broker _____ License No. _____
By: _____

Listing Broker _____ License No. _____
By: _____

Other Brokers Address _____ Phone No. _____

Listing Broker's Address _____ Phone No. _____

RECEIPT

On this day, _____, Escrow Agent acknowledges receipt of: (a) Contract; and (b) Earnest Money in the form of _____
Escrow Agent _____ By: _____
Address: _____ Phone: _____